

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	File Number EB-08-SE-198
)	
LCD Digital Electronics, Inc.)	NAL/Acct. No. 200832100075
)	
Newport Beach, California)	FRN: 0018060095
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: August 25, 2008**Released: August 27, 2008**

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture* ("NAL"), we find that LCD Digital Electronics, Inc. ("LCD Digital") apparently willfully and repeatedly violated Section 15.117(k) of the Commission's Rules ("Rules")¹ by failing to place the required Consumer Alert label immediately adjacent to and clearly associated with television receiving equipment that contains an analog broadcast television tuner but does not contain a digital broadcast television tuner (hereinafter "analog-only tuner") that it displayed or offered for sale or rent. We conclude, pursuant to Section 503(b) of the Communications Act of 1934, as amended ("Act"),² that LCD Digital is apparently liable for a forfeiture in the amount of sixteen thousand dollars (\$16,000).

II. BACKGROUND

2. Congress has established February 17, 2009 as the deadline for the end of analog transmissions for full power television stations. The Commission is statutorily obligated to promote the orderly transition to digital television, "a critical step in the evolution of broadcast television."³ As the Commission stated previously, "[w]e are committed to ensuring the rapid completion of that transition in a way that delivers the greatest possible benefits to the viewing public."⁴ As part of that commitment and in light of the upcoming deadline, the Commission recently announced that "it is necessary and appropriate to require retailers to provide consumers with information regarding this transition date at the point of sale."⁵ The Commission reached this conclusion after determining that consumer electronics

¹ 47 C.F.R. § 15.117(k).

² 47 U.S.C. § 503(b).

³ 2002 *Biennial Regulatory Review*, Report and Order and Notice of Proposed Rulemaking, 18 FCC Rcd 13620, 13825 ¶ 532 (2003).

⁴ *Id.*

⁵ *Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion To Digital Television*, Second Report and Order, 22 FCC Rcd 8776 ¶ 1 (2007) ("*Second DTV Periodic Report and Order*").

industry efforts had not adequately informed consumers how analog-only television equipment purchased now will function when the transition to digital broadcasting ends.⁶

3. To ensure that consumers do not inadvertently buy analog-only television equipment without understanding that such devices will not be capable of receiving off-the-air television reception of digital signals after analog broadcasting ends unless connected to a digital-to-analog converter or a digital subscription service, the Commission adopted rules requiring anyone that sells, offers for sale, or rents television receiving equipment that does not contain a digital television (“DTV”) tuner to display a Consumer Alert at the point of sale.⁷ This requirement also applies to the sale or rent of analog-only television receiving equipment via direct mail, catalog, or electronic means (*e.g.*, the Internet). These requirements are contained in Section 15.117(k) of the Rules, which became effective on May 25, 2007.⁸

4. Section 15.117(k)(3) of the Rules requires that the Consumer Alert contain the following language:

CONSUMER ALERT

This television receiver has only an analog broadcast tuner and will require a converter box after February 17, 2009, to receive over-the-air broadcasts with an antenna because of the Nation’s transition to digital broadcasting. Analog-only TVs should continue to work as before with cable and satellite TV services, gaming consoles, VCRs, DVD players, and similar products. For more information, call the Federal Communications Commission at 1-888-225-5322 (TTY: 1-888-835-5322) or visit the Commission’s digital television website at: www.dtv.gov.

The Consumer Alert must be in a size of type large enough to be clear, conspicuous and readily legible, consistent with the dimensions of the equipment and the label. The alert either must be printed on a transparent material and affixed to the screen, in a manner that is removable by the consumer and does not obscure the picture when displayed for sale, or displayed separately immediately adjacent to each television receiver offered for sale and clearly associated with the analog-only model to which it pertains.⁹ In the case of other analog-only video devices that do not include a display (*e.g.*, VCRs, DVD players), the Consumer Alert must be in a prominent location on the device, such as on the top or front, or displayed separately immediately adjacent to and clearly associated with the analog-only model to which it pertains.¹⁰ To the extent that any persons display or offer for sale or rent via direct mail, catalog, or electronic means analog-only television receiving equipment, they must prominently display the Consumer Alert as part of all advertisements or descriptions of such television receiving equipment, in clear and conspicuous print, and in close proximity to any images or descriptions of such equipment.¹¹

5. Immediately after the rule became effective, the Commission’s Enforcement Bureau began inspecting hundreds of stores throughout the country, as well as dozens of popular retailer websites, and

⁶ *Id.* at 8781-2, ¶ 10.

⁷ *Id.* at 8783, ¶ 14. See 47 C.F.R. § 15.117(k). In the *Second DTV Periodic Report and Order*, the Commission defined “point of sale” as the “place where televisions are displayed for consumers prior to purchase.” See *Second DTV Periodic Report and Order*, 22 FCC Rcd at 8780, n.29.

⁸ *Second Periodic Review in the Commission’s Rules and Policies Affecting the Conversion to Digital Television*, 72 Fed. Reg. 28894-01 (May 23, 2007).

⁹ 47 C.F.R. § 15.117(k)(1).

¹⁰ *Id.*

¹¹ 47 C.F.R. § 15.117(k)(2).

observed many models of analog-only television receiving equipment on display without the required Consumer Alert labels. On April 15, 2008, the Enforcement Bureau issued a Citation to LCD Digital for offering for sale television receiving equipment having an analog-only tuner without displaying the required Consumer Alert in close proximity.¹² After affording LCD Digital a reasonable opportunity to respond to the Citation,¹³ an investigator from the Enforcement Bureau visited LCD Digital's online store on June 12, 2008, and once again observed television receiving equipment with analog-only tuners on display without the required Consumer Alert labels.¹⁴

6. Under Section 503(b)(1) of the Act, any person who is determined by the Commission to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.¹⁵ Section 312(f)(1) of the Act defines willful as “the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate” the law.¹⁶ The legislative history to Section 312(f)(1) of the Act clarifies that this definition of willful applies to both Sections 312 and 503(b) of the Act¹⁷ and the Commission has so interpreted the term in imposing forfeitures pursuant to Section 503(b).¹⁸ The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.¹⁹ “Repeated” means that the act was committed or omitted more than once, or lasts more than one day.²⁰ To impose such a forfeiture penalty, the Commission must issue a notice of apparent liability and the person against whom the notice has been issued must have an opportunity to show, in writing, why no such forfeiture penalty should be imposed.²¹ The Commission will then issue a forfeiture if it finds by a preponderance of the evidence that the person has violated the Act or a Commission rule.²² As we set forth below, we conclude under this standard that LCD Digital is apparently liable for forfeiture for its apparent willful and repeated violations of Section 15.117(k) of the Commission’s rules.

III. DISCUSSION

7. Based on the evidence before us, we find that LCD Digital apparently willfully and repeatedly violated Section 15.117(k) of the Rules by failing to display conspicuously and in close proximity to equipment with an analog-only tuner, in clear and conspicuous print, the required Consumer

¹² *LCD Digital Electronics, Inc.*, Citation, 23 FCC Rcd 6445 (Enf. Bur., Spectrum Enf. Div. 2008).

¹³ On May 5, 2008, LCD Digital responded to the Citation. See Letter from Peter Mamakos, President, LCD Digital Electronics, Inc. to Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission (May 5, 2008).

¹⁴ See Attachment A for a listing of the models observed in the online store. Enforcement Bureau staff determined that these models had analog-only tuners by consulting the manufacturer’s product manuals or, if such were unavailable, the models’ technical specifications from LCD Digital’s website.

¹⁵ 47 U.S.C. § 503(b)(1)(B); 47 C.F.R. § 1.80(a)(2).

¹⁶ 47 U.S.C. § 312(f)(1).

¹⁷ H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

¹⁸ See, e.g., *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991) (“*Southern California Broadcasting Co.*”).

¹⁹ See, e.g., *Callais Cablevision, Inc., Grand Isle, Louisiana*, Notice of Apparent Liability for Forfeiture, 16 FCC Rcd 1359, 1362, ¶ 10 (2001) (“*Callais Cablevision*”) (issuing a Notice of Apparent Liability for, *inter alia*, a cable television operator’s repeated signal leakage).

²⁰ *Southern California Broadcasting Co.*, 6 FCC Rcd at 4388, ¶ 5; *Callais Cablevision, Inc.*, 16 FCC Rcd at 1362, ¶ 9.

²¹ 47 U.S.C. § 503(b); 47 C.F.R. § 1.80(f).

²² See, e.g., *SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7591, ¶ 4 (2002) (forfeiture paid).

Alert label. Specifically, as detailed in Attachment A, an investigator from the Enforcement Bureau observed two models of television receiving equipment having only an analog-only tuner on display in LCD Digital online store without the required Consumer Alert labels.²³ LCD Digital previously received one Citation for this same type of conduct prior to the investigator's observation.²⁴

8. Under Section 503(b)(2)(D) of the Act,²⁵ we may assess an entity that is neither a common carrier, broadcast licensee or cable operator a forfeiture of up to \$11,000 for each violation or each day of a continuing violation, up to a statutory maximum forfeiture of \$97,500 for any single continuing violation. In exercising such authority, we must take into account “the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”²⁶

9. The Commission has established \$8,000 as the base forfeiture for each unlabeled model in each store in violation of the analog-only tuner labeling requirements.²⁷ The Commission found that accurate disclosure of a device's analog-only capabilities is “a highly material disclosure for consumers contemplating the purchase of a television.”²⁸ The Commission also noted that it is “a matter of public safety for consumers who rely on analog-only televisions to obtain critical emergency information.”²⁹

10. We find that, on June 12, 2008, as detailed in Attachment A, even after receiving a Citation warning of violations in its online store, LCD Digital displayed two models of equipment with an analog-

²³ Attachment A lists the date of the Enforcement Bureau observation and the analog-only models identified in violation of Section 15.117(k). These two models are two of the twelve models listed in the Citation issued to LCD Digital on April 15, 2008.

²⁴ Section 503(b)(5) states that no forfeiture liability shall be determined against any person who does not hold a license, permit, certificate, or other authorization issued by the Commission unless, prior to issuance of any Notice of Apparent Liability, such person is “(A) sent a citation of the violation charged; (B) is given a reasonable opportunity for a personal interview with an official of the Commission at the field office of the Commission which is nearest to such person’s place of residence; and (C) subsequently engages in conduct of the type described in such citation.” 47 U.S.C. § 503(b)(5). The apparent violations discussed in this *NAL* are subject to forfeiture because we afforded LCD Digital a reasonable opportunity for a personal interview or to submit a written response to the Citation before conducting a second round of inspections that would count towards potential forfeiture liability. *See supra* para. 5 and notes 12, 13. To the extent that the television receiving models involved in this *NAL* differ from those listed in the *Citation*, no additional citations are necessary because the more recent apparent violations are “conduct of the type described” in the earlier *Citation* – violations of Section 15.117(k). *See HighTech CB Shop*, Forfeiture Order, 20 FCC Rcd 12514, 12516 ¶ 9 (Enf. Bur. South Central Region 2005), *recon. denied*, 20 FCC Rcd 19269 (Enf. Bur. 2005).

²⁵ 47 U.S.C. § 503(b)(2)(D). The Commission twice amended Section 1.80(b)(3) of the Rules, 47 C.F.R. § 1.80(b)(3), to increase the maximum forfeiture amounts, in accordance with the inflation adjustment requirements contained in the Debt Collection Improvement Act of 1996, 28 U.S.C. § 2461. *See Amendment of Section 1.80 of the Commission’s Rules and Adjustment of Forfeiture Maxima to Reflect Inflation*, Order, 15 FCC Rcd 18221 (2000) (adjusting the maximum statutory amounts from \$10,000/\$75,000 to \$11,000/\$87,500); *Amendment of Section 1.80 of the Commission’s Rules and Adjustment of Forfeiture Maxima to Reflect Inflation*, Order, 19 FCC Rcd 10945 (2004) (adjusting the maximum statutory amounts from \$11,000/\$87,500 to \$11,000/\$97,500).

²⁶ 47 U.S.C. § 503(b)(2)(E). *See also* 47 C.F.R. § 1.80(b)(4), Note to paragraph (b)(4): Section II. Adjustment Criteria for Section 503 Forfeitures.

²⁷ *See, e.g., Sears Roebuck and Co. Kmart Corporation*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd. 6293, 6297-6298 ¶ 10 (2008) (“*Sears*”). The Commission adopted the base forfeiture used by the Bureau in earlier Notices of Apparent Liability for Forfeiture. *See, e.g., Boscov’s Inc.*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 18449, 18453 ¶ 10 (Enf. Bur. 2007).

²⁸ *See e.g., Sears*, 23 FCC Rcd at 6297-6298 ¶ 9.

²⁹ *Id.*

only tuner without the required Consumer Alert label. As a result, LCD Digital continued to market television receiving equipment to consumers without adequately warning that the equipment contained an analog-only television receiver. Those consumers may not learn of their equipment's limitations until the analog-only devices cease to receive over-the-air television signals, long after any period for returning the equipment has expired. This scenario is precisely the outcome that our rule was intended to prevent.³⁰ In light of recent decisions and applying the analysis set forth above to the facts of this case, we conclude that LCD Digital is apparently liable for a base forfeiture of \$16,000 for failing to fully comply with the Consumer Alert labeling requirements in Section 15.117(k) of the Rules.³¹

IV. ORDERING CLAUSES

11. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Section 1.80 of the Commission's Rules, LCD Digital Electronics, Inc. is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of sixteen thousand dollars (\$16,000) for violations of Section 15.117(k) of the Rules.³²

12. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Commission's Rules within thirty days of the release date of this Notice of Apparent Liability for Forfeiture, LCD Digital Electronics, Inc. **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

13. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures. LCD Digital Electronics, Inc. will also send electronic notification on the date said payment is made to Celia Lewis at celia.lewis@fcc.gov and Ricardo Durham at ricardo.durham@fcc.gov.

14. The response, if any, must be mailed to the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, ATTN: Enforcement Bureau – Spectrum Enforcement Division, and must include the NAL/Acct. No. referenced in the caption.

³⁰ “After the transition, absent a label requirement, even cable and satellite subscribers might be surprised to find that they cannot receive television broadcasts over-the-air on an analog-only television purchased today if they choose to discontinue subscription service or their cable or satellite service is terminated by disaster, service disruption, or for non-payment of their bills.” *Second DTV Periodic Report and Order*, 22 FCC Rcd at 8782, ¶ 12.

³¹ See *Value City Department Stores, Inc.*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 7966 (2008) (proposing a forfeiture of \$216,000--\$8,000 for each device--for marketing numerous unlabeled analog-only television receivers); See also *Boscov's Inc.*, 22 FCC Rcd at 18453 ¶ 10; *Gregg Appliances, Inc. d/b/a HHGregg*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 18467 (Enf. Bur. 2007). See also Attachment A regarding the calculation of the total proposed forfeiture amounts.

³² 47 U.S.C. § 503(b), 47 C.F.R. §§ 1.80, 15.117(k).

15. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices; or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

16. **IT IS FURTHER ORDERED** that a copy of this *Notice of Apparent Liability for Forfeiture* shall be sent by first class mail and certified mail return receipt requested to Peter Mamakos, President, LCD Digital Electronics, Inc., 4540 Campus Drive, Newport Beach, California 92660.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith
Chief, Enforcement Bureau

ATTACHMENT A**Proposed Forfeiture Amount****1. June 12, 2008, LCD Digital Electronics, Inc., www.lcddigital.tv/televisions.html**

Manufacturer/Brand	Device	Model #	Forfeiture Amount	
LCDDIGITAL	7" LCD Portable TV	LCD7G	\$8,000	
LCDDIGITAL	7" LCD Portable TV Compact	LCD7L	\$8,000	
			SUBTOTAL	\$16,000

Total Proposed Forfeiture: \$16,000